IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 44 of 1990

with

INCOME TAX REFERENCE Nos 41 and 43 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANUBHAI BABUBHAI CHAVDA

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 44 of 1990

MR KA PUJ for Petitioner No. 1

MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these References at the instance of the assessee, the following three questions have been referred for the opinion of this Court in respect of assessment year 1981-82 :-

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in stating that it was unable to follow the decision of the Bombay High Court in the case of Manubhai A Sheth (128 ITR 87) in preference to a binding decision of the Gujarat High Court in the case of Ambalal Maganlal (98 ITR 237) particularly when the appellant put a stress on the point that the capital gain arising on the sale of Agricultural land was revenue u/s.2 (1) of the Income Tax Act, Bombay High Court in the cases of Manubhai A. Sheth and Nadirsha A Mulla (154 ITR 629) which point was never discussed by the Gujarat High Court in the case of Ambalal Maganlal ?

(ii) Whether, on the facts and in the circumstances of the case the decision of the Gujarat High Court in the case of Ambalal Maganlal (98 ITR 237) could be said to have covered the contention of the appellant that the capital gain arising out of the sale of agricultural land was revenue under sub-section (1) of sec. (2) of I.T. Act, 1961 ?

(iii) Whether, on the facts and in the circumstances of the case capital gain of Rs.23,200/- arising out of the sale of agricultural land is revenue under sub-section (1) of section (2) of I.T. Act, 1961?

2. We have heard Mr. K.A. Puj learned counsel for the applicant -assessee, and Mr. B.B. Naik learned counsel for the revenue.

3. The learned counsel for the parties fairly state that the controversy raised herein is concluded in favour of the revenue by the decision of the Supreme Court in Singhai Rameshkumar vs. Union of India & Ors. (2001) 247 ITR 150.

4. We accordingly answer question No.1 in the affirmative i.e. in favour of the revenue and against the assessee.

5. We accordingly answer question No.2 also in the affirmative i.e. in favour of the revenue and against the assessee.

6. Our answer to question No.3 is in the negative i.e. in favour of the revenue and against the assessee.

7. The References accordingly stand disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-